

**REMARKS****I. GENERAL**

Claims 1-24 are pending. Claims 1-24 stand rejected. The issues in the Current Action are as follows:

- The abstract of the disclosure is objected to on grounds that it contains paragraph numbers, the word abstract is misspelled, and it is written as two paragraphs.
- The disclosure is objected to on grounds that paragraph [0050], as originally filed, discloses paper upon which a computer program is printed is classified as a computer-readable medium.
- Claims 3-7, 9, 10, 12, 13, 18, 19 and 22-23 are objected on grounds that the acronyms ART, CHAID, XML, HTTP, and IP are not defined.
- Claims 22-24 are objected to on the grounds that they appear to limit claims 21-23 rather than claims 17-19.
- Claims 17-24 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter.
- Claims 1, 2, 11, 17, and 21 stand rejected under 35 U.S.C. § 102 as being anticipated by *Bahadiroglu*, Pub. No. 2002/0186660 A1 (hereinafter "*Bahadiroglu*").
- Claim 3 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Bahadiroglu* in view of *Anstey et al.*, US Pat. No. 6,639,900 (hereinafter "*Anstey*").
- Claims 4 and 5 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Bahadiroglu* in view of *Anstey*, and further in view of *Schmidt*, Pub. No. 2002/0049720 (hereinafter "*Schmidt*").

- Claims 6-8 and 10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Bahadiroglu* in view of *Anstey*, and further in view of *Schmidt* and *Adhikari et. al.*, Pub. No. 2004/0252646 (hereinafter “*Adhikari*”).
- Claims 9, 12, 18, and 22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Bahadiroglu* in view of *Adhikari*.
- Claims 13-16, 19-20 and 23-24 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Bahadiroglu* in view of *Adhikari*, and further in view of *Anstey* and *Schmidt*.

## II. SPECIFICATION OBJECTIONS

In the Current Action, Examiner requests that the abstract of the disclosure be amended to remove paragraph numbers, correct the spelling of abstract, and write the abstract in one paragraph. Accordingly, the abstract is amended to comply with the Examiner's requests. Applicant has removed paragraph numbers from the abstract, corrected the spelling of abstract, and written the abstract as a single paragraph. Accordingly, withdrawal of the objection is respectfully requested.

Examiner also objects to Applicant's characterization, at paragraph [0050] of the specification, as originally filed, of paper upon which a program is printed as a computer-readable medium. Applicant respectfully submits that this characterization is proper. Examiner argues that paper containing a written program is not a computer-readable medium because the computer is actually reading a digital representation of the paper and not the paper itself. *See* Current Action, pg. 2. While it is true that the computer is reading a digital representation of the information stored in writing on a piece of paper, this is no different than reading a program from any storage device. When a computer reads a program from any computer-readable medium, the computer reads the program from a storage device, compiles the program, interprets or otherwise processes the program if necessary, and then stores the program in a computer memory. The only difference in the instance where the program is stored in writing on paper is the means the computer uses to read the stored information are different – i.e., the extra step of optical scanning

is required. For these reasons, paragraph [0050] is acceptable in its present form, and Applicant requests the withdrawal of the objection.

### **III. CLAIM OBJECTIONS**

Claims 22-24 are objected to on the ground that they appear to limit claim 21, not claims 17-19. Applicant has amended claims 22 through 24 to limit claim 21.

Claims 3-7, 9, 10, 12, 13, 18, 19, and 22-23 are objected to on grounds that the acronyms ART, CHAID, XML, HTTP, and IP are not defined. However, Applicant points out that although the specification should not be read into the claims, the claims should be read in light of the specification. “When the specification states the meaning that a term in the claim is intended to have, the claim is examined using that meaning....” *Id.* (citing *In re Zletz*, 893 F.2d 319 (Fed. Cir. 1989)).

In the present application, the acronyms ART, CHAID, XML, HTTP, and IP are defined in the specification. Further, these acronyms are well known in the art and do not create ambiguity as to the metes and bounds of the claimed invention. XML is defined as extensible markup language in paragraph [0018] of the specification. HTTP is defined as hyper text transport protocol in paragraph [0027] of the specification. ART is defined as adaptive resonance theory at paragraph [0041] of the specification. CHAID is defined as chi-squared automatic interaction detector at paragraph [0042] of the specification, and IP is defined as internet protocol in paragraph [0002] of the specification. Because the acronyms ART, CHAID, XML, HTTP, and IP are defined in the specification and well known to those reasonably skilled in the art, Applicant respectfully requests that Examiner withdraw the objections to the use of the acronyms ART, CHAID, XML, HTTP, and IP in the claims.

### **IV. CLAIM REJECTIONS UNDER 35 U.S.C. § 101**

Claims 17-24 are rejected under 35 U.S.C. § 101 as being directed to allegedly non-statutory subject matter. The Examiner states “[t]he CRM as disclosed in the specification includes recording the information on a signal carrier.” *See Current Action*, pp. 2-3. Applicant points out that 35 U.S.C. § 101 states “[w]hoever invents or discovers any new and useful

process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.” Applicant respectfully points out that, although the software code may be communicated via a propagation medium (*see* specification [0050]), Applicant is specifically claiming a computer readable medium storing the computer executable code. This is expressly allowed under *In re Beauregard*, wherein the Commissioner of Patents and Trademarks stated “that computer programs embodied in a tangible medium, such as floppy diskettes, are patentable subject matter.” *In re Beauregard*, 53 F.3d 1583, 1584 (Fed. Cir. 1995). As such, the Examiner has not shown how Applicant’s computer readable medium is not statutory subject matter. Therefore, Applicant respectfully asserts that claims 17-24 are directed to statutory subject matter and requests withdrawal of the rejections.

#### V. CLAIM REJECTIONS UNDER 35 U.S.C. § 102

Claims 1, 2, 11, 17, and 21 stand rejected under 35 U.S.C. § 102 as being anticipated by *Bahadiroglu*. “A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegal Bros. v. Union Oil Co. of Cal.*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Because *Bahadiroglu* fails to teach each and every claim element of claims 1, 2, 11, 17, and 21 in the present application, Applicant respectfully submits that the rejections of claims 1, 2, 11, 17, and 21 under 35 U.S.C. § 102(b) are improper.

Independent claim 1 recites, in part, “a neural processing module to process raw digital data provided to the host analyzer by the first client analyzer.” Examiner relies on *Bahadiroglu*, paragraph [0109], as teaching this limitation of claim 1. However, Applicant points out that any component of *Bahadiroglu* that could be construed as a “neural processing module” would receive processed data, not “raw digital data” as set forth in the claim. The Packet Transfer Engines disclosed in *Bahadiroglu* calculate network condition information by extracting transmission characteristics, “such as available bandwidth, latency and jitter,” of packets sent between a sending and receiving node. *Bahadiroglu*, para. [0113]. The Packet Transfer Engines then provide this extracted network condition information to a Collector/Controller that is associated with a Network Analyzer for determining optimum packet size and inter-packet

interval. *Bahadiroglu*, paras. [0109], [0113]. Extracting transmission characteristics such as available bandwidth, latency, and jitter requires processing of the raw data transferred between two network nodes. Thus, the neural network disclosed in *Bahadiroglu* does not “process raw digital data.” Rather, it receives only processed data determined by a packet transfer engine. Because *Bahadiroglu* fails to teach the limitation “a neural processing module to process raw digital data,” Applicant requests the rejection of claim 1 under 35 U.S.C. § 102(b) be withdrawn.

Claim 2 recites “a data processing element that processes the selected data set to generate a normalized data set.” Examiner points to *Bahadiroglu*, at paragraph [0078], as satisfying this limitation of claim 2. At the Examiner’s citation *Bahadiroglu* merely teaches that the Collector/Controller determines optimum packet size and inter-packet interval for network conditions determined by the Packet Transfer Engines. However, *Bahadiroglu* does not teach that the network information (data set) extracted by the Packet Transfer Engines and provided to the Collector/Controller is normalized before being processed by the Network Analyzer associated with the Collector/Controller. Thus, *Bahadiroglu* fails to teach a “data processing element that processes the selected data set to generate a normalized data set.”

Claim 2 also recites “a data mining module that uses the set of rules and relationships to generate a mined data set from the selected data set.” The Examiner relies on *Bahadiroglu*’s Result Database, described at paragraph [0135] and figure 6A, as teaching this limitation. Current Action, pg. 4. *Bahadiroglu* merely teaches that network condition information pertaining to a connection between two network nodes may be stored in a database for archival purposes. Merely “storing” does not satisfy using rules and relationships to generate a mined data set from the selected data. Nothing in *Bahadiroglu* suggests using rules and relationships generated by a neural network to generate a mined data set from the archived network condition information, as set forth in claim 2. Thus, *Bahadiroglu* does not satisfy the limitation “a data mining module that uses the set of rules and relationships to generate a mined data set from the selected data set.” Because *Bahadiroglu* fails to teach, at least, the two aforementioned limitations of claim 2, Applicant respectfully requests that Examiner withdraw the rejection of claim 2 under 35 U.S.C. § 102(b).

Independent claim 11 recites, in part, “generating a normalized data set from the selected data set.” Examiner points to *Bahadiroglu*, at paragraph [0078], as satisfying this limitation of claim 11. *Bahadiroglu* merely teaches that the Collector/Controller determines optimum packet size and inter-packet interval for network conditions determined by the Packet Transfer Engines. *Bahadiroglu* does not teach that the network information (data set) extracted by the Packet Transfer Engines and provided to the Collector/Controller is “normalized” before being processed by the Network Analyzer associated with the Collector/Controller. Thus, *Bahadiroglu* fails to teach a “generating a normalized data set from the selected data set.”

Claim 11 also recites “using the set of rules and relationships for mining the selected data set to generate a mined data set.” The Examiner relies on *Bahadiroglu*’s Result Database, described at paragraph [0135] and figure 6A, as teaching this limitation. Current Action, pg. 4. *Bahadiroglu* merely teaches that network condition information pertaining to a connection between two network nodes may be stored in a database for archival purposes. Merely “storing” does not satisfy using rules and relationships to generate a mined data set from the selected data. As such, nothing in *Bahadiroglu* suggests using rules and relationships generated by a neural network to generate a mined data set from the archived network condition information, as set forth in claim 11. Thus, *Bahadiroglu* does not satisfy the limitation “using the set of rules and relationships for mining the selected data set to generate a mined data set.” Because *Bahadiroglu* fails to teach, at least, the two aforementioned limitations of claim 11, Applicant respectfully requests that Examiner withdraw the rejection of claim 11 under 35 U.S.C. § 102(b).

Independent claim 17 recites, in part, “logic configured to generate a normalized data set from the selected data set.” Examiner points to *Bahadiroglu*, at paragraph [0078], as satisfying this limitation of claim 17. *Bahadiroglu* merely teaches that the Collector/Controller determines optimum packet size and inter-packet interval for network conditions determined by the Packet Transfer Engines. *Bahadiroglu* does not teach that the network information (data set) extracted by the Packet Transfer Engines and provided to the Collector/Controller is “normalized” before being processed by the Network Analyzer associated with the Collector/Controller. It naturally follows, *Bahadiroglu* fails to teach a “logic configured to generate a normalized data set from the selected data set.”

Claim 17 also recites “logic configured to use the set of rules and relationships for mining the selected data set to generate a mined data set.” The Examiner relies on *Bahadiroglu*’s Result Database, described at paragraph [0135] and figure 6A, as teaching this limitation. Current Action, pg. 4. *Bahadiroglu* merely teaches that network condition information pertaining to a connection between two network nodes may be stored in a database for archival purposes. Merely “storing” does not satisfy using rules and relationships to generate a mined data set from the selected data. As such, nothing in *Bahadiroglu* suggests using rules and relationships generated by a neural network to generate a mined data set from the archived network condition information, as set forth in claim 17. Thus, *Bahadiroglu* does not satisfy the limitation “logic configured to use the set of rules and relationships for mining the selected data set to generate a mined data set.” Because *Bahadiroglu* fails to teach, at least, the two aforementioned limitations of claim 17, Applicant respectfully requests that Examiner withdraw the rejection of claim 17 under 35 U.S.C. § 102(b).

Independent claim 21 recites, in part, “means for generating a normalized data set from the selected data set.” Examiner points to *Bahadiroglu*, at paragraph [0078], as satisfying this limitation of claim 21. *Bahadiroglu* merely teaches that the Collector/Controller determines optimum packet size and inter-packet interval for network conditions determined by the Packet Transfer Engines. *Bahadiroglu* does not teach that the network information (data set) extracted by the Packet Transfer Engines and provided to the Collector/Controller is “normalized” before being processed by the Network Analyzer associated with the Collector/Controller. Thus, *Bahadiroglu* fails to teach a “means for generating a normalized data set from the selected data set.”

Claim 21 also recites “means for using the set of rules and relationships for mining the selected data set to generate a mined data set.” The Examiner relies on *Bahadiroglu*’s Result Database, described at paragraph [0135] and figure 6A, as teaching this limitation. Current Action, pg. 4. *Bahadiroglu* merely teaches that network condition information pertaining to a connection between two network nodes may be stored in a database for archival purposes. Merely “storing” does not satisfy using rules and relationships to generate a mined data set from the selected data. As such, nothing in *Bahadiroglu* suggests using rules and relationships generated by a neural network to generate a mined data set from the archived network condition

information, as set forth in claim 21. Thus, *Bahadiroglu* does not satisfy the limitation “means for using the set of rules and relationships for mining the selected data set to generate a mined data set.” Because *Bahadiroglu* fails to teach, at least, the two aforementioned limitations of claim 21, Applicant respectfully requests that Examiner withdraw the rejection of claim 21 under 35 U.S.C. § 102(b).

## VI. CLAIM REJECTIONS UNDER 35 U.S.C. § 103

Claims 3-10, 12-16, 18-20, and 22-24 stand rejected under 35 U.S.C. § 103(a). Claim 3 is rejected under 35 U.S.C. § 103(a) as being unpatentable over *Bahadiroglu* in view of *Anstey*. Claims 4 and 5 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Bahadiroglu* in view of *Anstey*, and further in view of *Schmidt*. Claims 6-8 and 10 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Bahadiroglu* in view of *Anstey*, and further in view of *Schmidt* and *Adhikari*. Claims 9, 12, 18, and 22 are rejected under 35 U.S.C. § 103(a) as being unpatentable over *Bahadiroglu* in view of *Adhikari*. Claims 13-16, 19-20, and 23-24 are rejected under 35 U.S.C. § 103(a) as being upatentable over *Bahadiroglu* as modified by *Adhikari*, and further in view of *Anstey* and *Schmidt*.

The Current Action fails to establish a *prima facie* case of obviousness for claims 3-10, 12-16, 18-20, and 22-24. The Examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. M.P.E.P. § 2142. If the Examiner fails to produce a *prima facie* case, the Applicant is under no obligation to provide evidence of nonobviousness. To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references when combined must teach or suggest all the claim limitations. M.P.E.P. § 2143. If the Examiner fails to provide factual support for any of these three criteria, the Examiner has not made a *prima facie* case of obviousness. The Current Action does not make a *prima facie* conclusion of obviousness.



**A. The Current Action Fails to Provide Factual Support Showing that the Proposed Combinations Have a Reasonable Expectation of Success**

The Current Action also fails to provide evidence that the proposed combinations have a reasonable expectation of success. As noted above, the Examiner bears the burden of providing evidence showing a reasonable expectation of success when combining references. The rejections of claims 3-10, 12-16, 18-20, and 22-24 don't even raise the issue of expectation of success, much less provide evidence supporting a reasonable expectation of success. Without presenting any evidence to support a reasonable expectation of success, Examiner cannot establish a *prima facie* case of obviousness. The rejections of claims 3-10, 12-16, 18-20, and 22-24 under 35 U.S.C. § 103 fail for at least this reason.

**B. The Proposed Combinations Fail to Satisfy all the Claim Limitations**

The suggested combinations do not teach or suggest all the claim limitations of claims 3-10. Dependent claims 3-10, 12-16, 18-20, and 22-24 each depend, either directly or indirectly, from claims 1, 11, 17, and 21, respectively, and inherit all of the limitations of claims 1, 11, 17, and 21. As shown above, the cited portions of *Bahadiroglu* do not teach every feature of claims 1, 11, 17, and 21. The rejections of claims 3-10, 12-16, 18-20, and 22-24 do not rely on *Anstey*, *Schmidt*, or *Adhikari* to satisfy the features that are shown to be missing in the cited portions of *Bahadiroglu*. Accordingly, the rejections of record for claims 3-10, 12-16, 18-20, and 22-24 do not teach or suggest every limitation of claims 1, 11, 17, and 21. Thus, the proposed combinations do not teach or suggest all of the claim limitations of claims 3-10, 12-16, 18-20, and 22-24, and the Current Action fails to establish a *prima facie* case of obviousness.

The Examiner has failed to establish a *prima facie* case of obviousness with respect to the rejections of claims 3-10, 12-16, 18-20, and 22-24 under 35 U.S.C. § 103. Applicant has shown that the cited references fail to disclose every limitation of claims these claims. Applicant has also pointed out that the Current Action fails to satisfy its burden of production regarding the expectation of success resulting from the combination of cited references. Because the Current Action fails to present this evidence, a *prima facie* case of obviousness is not made. Accordingly, Applicant respectfully asserts that the claims are allowable as presented in this response.

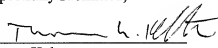
## VII. CONCLUSION

In view of the above, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge Deposit Account No. 50-1078, under Order No. 10021131-1 from which the undersigned is authorized to draw.

Dated: September 26, 2007

Respectfully submitted,

By   
Thomas Kelton  
Registration No.: 54,214  
Attorney for Applicant  
(214) 855-7115

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the U. S. Patent and Trademark Office electronic filing system in accordance with § 1.6(a)(4).

By: 

Linda L. Gibson

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